
OLR Bill Analysis

HB 5257

AN ACT CONCERNING HOSPITAL EMPLOYEES AND HOSPITAL CONVERSIONS.

SUMMARY:

This bill creates additional requirements that a nonprofit hospital and an entity seeking to convert it to a for-profit hospital ("the purchaser") must meet before and after undergoing the conversion process required by law. Prior to the conversion, it requires the hospital and purchaser to enter into a memorandum of understanding (MOU) that, among other things, requires the purchaser to recognize the hospital's unions and honor its collective bargaining agreements (see COMMENT). It also requires the hospital's host municipality to hold three public hearings for the hospital and purchaser at least 60 days before they start the conversion.

Within 30 days after completing the conversion, the bill requires the purchaser to submit to the departments of Labor and Public Health a five-year strategic plan detailing how its decisions to change the hospital's health care services could affect employment.

Under the bill, a nonprofit hospital converts to a for-profit hospital when the hospital's transfer of its assets or operation to a for-profit entity results in:

1. a change in the ownership, control, or possession of at least 20% of the (a) voting rights in the hospital or (b) hospital's interests or assets (The bill does not define "voting rights in the hospital," but presumably it refers to votes that can influence control over the hospital.);
2. a previously unaffiliated entity controlling at least 10% of the (a) voting rights in the hospital or (b) hospital's interests or assets;
or

3. a change in the hospital's ownership or membership interest that gives a previously unaffiliated entity a controlling interest or vote in the hospital.

EFFECTIVE DATE: Upon passage

MEMORANDUM OF UNDERSTANDING

The bill requires a nonprofit hospital and purchaser, before the conversion process, to enter into a written MOU to preserve community benefits in the hospital's host municipality and any other municipality regularly served by the hospital. The MOU must require the purchaser to:

1. maintain existing pay rates and benefits for employees employed at the hospital when it converts,
2. recognize any unions representing the hospital's employees when it converts,
3. honor the hospital's existing collective bargaining agreements,
4. maintain the hospital's existing staffing levels for at least three years after the conversion process required by law ends, and
5. follow best practices for staffing levels to assure patient care and safety.

It is unclear how such an MOU would be enforced once the conversion is complete.

PUBLIC HEARINGS

The bill requires the hospital's host municipality to hold at least three public hearings no later than 60 days before the hospital and purchaser file a certificate of need application with the Department of Public Health (see "BACKGROUND"). At least 14 days before each hearing, notice must be published (presumably, by the municipality) in a newspaper of general circulation in the hospital's host municipality and any other municipality whose inhabitants the hospital regularly serves. The hearing must include (1) a discussion of the conversion

and the purchaser, (2) a summary of the proposed conversion's potential impact on employment at the hospital, and (3) an opportunity to question the purchaser's and hospital's representatives about any relevant concerns.

BACKGROUND

Conversion Process Required by Law

The law requires the public health commissioner or her designee and the attorney general (AG) to review and approve a nonprofit hospital's conversion to a for-profit entity (CGS §§ 19a-486 to 486h). Filing a certificate of need application with the Department of Public Health (DPH) is one of the initial steps the parties must take in the process. Before approving the conversion, DPH and the AG must hold a hearing and consider numerous factors, including whether (1) the hospital exercised due diligence in deciding to pursue a conversion, (2) the hospital will receive fair market value for its assets, and (3) the affected community is assured of continued access to affordable health care.

COMMENT

Federal Preemption

Under the Supremacy Clause of the U.S. Constitution, state law is preempted when Congress explicitly states its intent to regulate in the area (Art.VI). The National Labor Relations Act (29 USC §§151-169) and the National Labor Relations Board, which was created by the act, have jurisdiction over requirement for recognizing private-sector unions and determining if a collective bargaining agreement transfers to a successor employer. Because of this, the bill's provisions requiring the purchaser to recognize the hospital's unions and honor its collective bargaining agreements may be vulnerable to a legal challenge asserting the law is preempted.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 4 (03/11/2014)

